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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

BRYAN WILLIAM ROBERTSON
P O Box 421042
San Francisco, CA 94142

Registered Nurse License No. 527690

RESPONDENT

Case No. 2011-859

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 15, 2011, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2011-859 against Bryan William Robertson (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about October 30, 1996, the Board of Registered Nursing (Board) issued Registered Nurse License No. 527690 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

3. On or about April 15, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2011-859, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record which, pursuant to Business and Professions Code section 136 and/Title 16, California Code of Regulation, section 1409.1, is required to be reported and maintained with the Board, which was and is:

P O Box 421042

San Francisco, CA 94142.

1 4. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
3 124.

4 5. On or about May 10, 2011, the signed Certified Mail Receipt was returned to our
5 office indicating a delivery date of April 22, 2011.

6 6. Business and Professions Code section 2764 states:

7 The lapsing or suspension of a license by operation of law or by order or decision of
8 the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive
9 the board of jurisdiction to proceed with an investigation of or action or disciplinary proceeding
10 against such license, or to render a decision suspending or revoking such license.

11 7. Government Code section 11506 states, in pertinent part:

12 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
13 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
14 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
15 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

16 8. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 2011-
18 859.

19 9. California Government Code section 11520 states, in pertinent part:

20 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
21 agency may take action based upon the respondent's express admissions or upon other evidence
22 and affidavits may be used as evidence without any notice to respondent.

23 10. Pursuant to its authority under Government Code section 11520, the Board after
24 having reviewed the proof of service dated April 15, 2011, signed by Kami Pratab, and finds
25 Respondent is in default. The Board will take action without further hearing and, based on
26 Accusation No. 2011-859 and the documents contained in Default Decision Investigatory
27 Evidence Packet in this matter which includes:
28

- 1 Exhibit 1: Pleadings offered for jurisdictional purposes; Accusation No. 211-859,
2 Statement to Respondent, Notice of Defense (two blank copies), Request
3 for Discovery and Discovery Statutes (Government Code sections
4 11507.5, 11507.6 and 11507.7), proof of service; and if applicable, mail
5 receipt or copy of returned mail envelopes;
- 6 Exhibit 2: License History Certification for Bryan William Robertson, Registered
7 Nurse License No. 527690;
- 8 Exhibit 3: Affidavit of Andrew Omahen;
- 9 Exhibit 4: Certification of costs by Board for investigation and enforcement in Case
10 No. 2011-859;
- 11 Exhibit 5: Declaration of costs by Office of the Attorney General for prosecution of
12 Case No. 2011-859.

13 The Board finds that the charges and allegations in Accusation No. 2011-859 are separately and
14 severally true and correct by clear and convincing evidence.

15 11. Taking official notice of Certification of Board Costs and the Declaration of Costs by
16 the Office of the Attorney General contained in the Default Decision Investigatory Evidence
17 Packet, pursuant to the Business and Professions Code section 125.3, it is hereby determined that
18 the reasonable costs for Investigation and Enforcement in connection with the Accusation are
19 \$6,208.75 as of May 16, 2011.

20 DETERMINATION OF ISSUES

21 1. Based on the foregoing findings of fact, Respondent Bryan William Robertson has
22 subjected his following license(s) to discipline:

23 a. Registered Nurse License No. 527690

24 2. The agency has jurisdiction to adjudicate this case by default.

25 3. The Board of Registered Nursing is authorized to revoke Respondent's license(s)
26 based upon the following violations alleged in the Accusation, which are supported by the
27 evidence contained in the Default Decision Investigatory Evidence Packet in this case.

28 //

- 1 a. Violation of Business and Professions Code section 2761(a) - Unprofessional
2 Conduct.
3 b. Violation of Business and Professions Code section 2762(a) - Obtaining or
4 possessing controlled substances without a prescription.

5 **ORDER**

6 IT IS SO ORDERED that Registered Nurse License No. 527690, heretofore issued to
7 Respondent Bryan William Robertson, is revoked.

8 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
9 written motion requesting that the Decision be vacated and stating the grounds relied on within
10 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
11 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

12 This Decision shall become effective on September 16, 2011.

13 It is so ORDERED August 17, 2011.
14

15 

16 JEANNINE K. GRAVES
17 President
18 Board of Registered Nursing
19 Department of Consumer Affairs
20

21 Attachment:

22 Exhibit A: Accusation No. 2011-859
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Exhibit A

Accusation Case No. 2011-859

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 LESLIE E. BRAST
Deputy Attorney General
4 State Bar No. 203296
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5548
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2011-859

12 **BRYAN WILLIAM ROBERTSON**
13 **P.O. Box 421042**
San Francisco, CA 94142

A C C U S A T I O N

14 **Registered Nurse License No. RN 527690**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant), brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs.

22 2. On or about October 30, 1996, the Board issued Registered Nurse License Number
23 RN 527690 to Bryan William Robertson (Respondent). The license was in full force and effect at
24 all times relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

1 4. Code section 2750 provides, in pertinent part, that the Board may discipline any
2 licensee, including a licensee holding a temporary or an inactive license, for any reason provided
3 in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4 5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
5 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
6 to render a decision imposing discipline on the license. Under Code section 2811, subdivision
7 (b), the Board may renew an expired license at any time within eight years after the expiration.

8 STATUTORY PROVISIONS

9 6. Code section 2761, subdivision (a), provides that the Board may take disciplinary
10 action against a licensed nurse for “[u]nprofessional conduct.”

11 7. Code section 2762 states, in pertinent part:

12 “In addition to other acts constituting unprofessional conduct within the meaning of this
13 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
14 chapter to do any of the following:

15 “(a) Obtain or possess in violation of law . . . or except as directed by a licensed physician
16 and surgeon, dentist, or podiatrist administer to himself or herself . . . any controlled substance as
17 defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any
18 dangerous drug . . . as defined in Section 4022.”

19 8. Code section 4021 provides that a “controlled substance” is any substance listed in
20 Division 10, Chapter 2 (Section 11053 et seq.) of the Health and Safety Code.

21 9. Code section 4022 states, in pertinent part:

22 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
23 except veterinary drugs that are labeled as such, and includes the following:

24 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
25 prescription,’ ‘Rx only,’ or words of similar import.

26 . . .

27 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
28 prescription or furnished pursuant to Section 4006.”

10. Code section 4060 provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.

11. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.

12. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess any controlled substance in Schedule II, subdivision (d), without a prescription.

13. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any person to use or be under the influence of any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (d)(1) or (d)(2), or any narcotic drug in Schedules III-V, except when administered by or under the direction of an authorized licensee.

COST RECOVERY

14. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Amphetamine Possession/Use)

15. Respondent is subject to disciplinary action under Code sections 2761(a) and 2762(a), for unprofessional conduct in that he possessed and/or administered to himself in violation of law a controlled substance and dangerous drug, as follows:

16. On or about February 27, 2009, Respondent tested positive for amphetamine¹ following a pre-employment urine drug screen required by MGA Healthcare, a nursing registry, from which Respondent sought work as a registered nurse.

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¹ Amphetamine, a stimulant, is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(1), and a dangerous drug pursuant to Business and Professions Code section 4022.

1 OTHER MATTERS

2 17. In order to determine the degree of discipline, if any, the Board alleges as matters in
3 aggravation that Respondent was twice convicted of embezzlement, as follows:

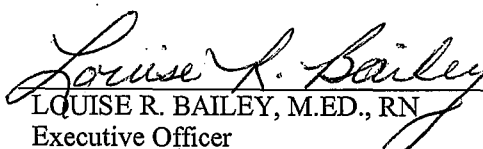
- 4 a. In 1988, in the United States District Court, District of South Carolina,
5 Respondent was convicted pursuant to title 18 U.S. Code section 656 (theft,
6 embezzlement, or misapplication by bank officer or employee);
7 b. On or about November 7, 1990, in North Carolina Superior Court, Mecklenburg
8 County, Case No. CRS-56126, Respondent was convicted pursuant to North
9 Carolina General Statutes section 14-90 (embezzlement of property received by
10 virtue of office or employment), a felony.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Registered Nursing issue a decision:

- 14 1. Revoking or suspending Registered Nurse License Number RN 527690, issued to
15 Bryan William Robertson;
16 2. Ordering Bryan William Robertson to pay the Board of Registered Nursing the
17 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3;
19 3. Taking such other and further action as deemed necessary and proper.
20

21 DATED: 4/15/11

22 
23 LOUISE R. BAILEY, M.ED., RN
24 Executive Officer
25 Board of Registered Nursing
26 Department of Consumer Affairs
27 State of California
28 Complainant

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